

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 2:05-cr-00040-KJD-RJJ

Plaintiff,

ORDER

v.

MARIO WEICKS,

Defendant.

Presently before the Court is Defendant's first Motion to Modify Sentence under 18 U.S.C. § 3582 (#248) and Defendant's second Motion for Compassionate Release (#264). The Government responded in opposition to both. (#251, #265). Defendant replied to both motions. (#255, #266).

I. Factual and Procedural History

In 2004, Mario Weicks ("Weicks") brought a fifteen-year-old girl from Sacramento, California, to Las Vegas, Nevada to work as a prostitute for him. He was convicted at trial of two counts of transportation of a minor with intent to engage in a criminal sexual activity in violation of 18 U.S.C. § 2423(a); two counts of travel with intent to engage in illicit sexual conduct in violation of 18 U.S.C. § 2423(b); one count of possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1); and one count of possession of a firearm in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c).

The Court initially sentenced Weicks to 360 months imprisonment. After vacatur of Weicks § 924(c) conviction in light of United States v. Davis, 139 S. Ct. 2319 (2019), the Court resentenced him in 2020 to a total of 270 months imprisonment.

Weicks now seeks compassionate release. He asserts that the "threat of Covid, combined with the lack of protective measures being taken by the prison, justify release under the statute,"

1 and claims that he “cannot adequately care for his own health in the context of a prison
2 environment during COVID.” The government opposes granting compassionate release.

3 II. Analysis

4 A. Legal Standard

5 The district court that imposed sentence on a criminal defendant has authority to modify the
6 term of imprisonment under the compassionate release statute, 18 U.S.C. § 3582(c)(1)(A), as
7 amended by the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (Dec. 21, 2018).
8 That statute provides, in relevant part:

9 [T]he court, upon motion of the Director of the Bureau of Prisons,
10 or upon motion of the defendant after the defendant has fully
11 exhausted all administrative rights to appeal a failure of the Bureau
12 of Prisons to bring a motion on the defendant's behalf or the lapse
13 of 30 days from the receipt of such a request by the warden of the
14 defendant's facility, whichever is earlier, may reduce the term of
15 imprisonment (and may impose a term of probation or supervised
16 release with or without conditions that does not exceed the
unserved portion of the original term of imprisonment), after
considering the factors set forth in section 3553(a) to the extent
that they are applicable, if it finds that [...] extraordinary and
compelling reasons warrant such a reduction [...] and that such a
reduction is consistent with applicable policy statements issued by
the Sentencing Commission[.]

17 18 U.S.C. §§ 3582(c)(1)(A), 3582(c)(1)(A)(i).

18 The defendant must first exhaust all administrative remedies. A defendant must ask the
19 Bureau of Prisons (“BOP”) to bring a motion for compassionate release on the defendant’s
20 behalf before filing such a motion with the Court, by submitting a request to the warden. See 18
21 U.S.C. § 3582(c)(1)(A). 30 days must elapse from filing a request with the warden before the
22 defendant can motion the court. Id. Once the defendant has satisfied all available administrative
23 remedies, the analysis is twofold. First, the Court must consider the same factors applicable at
24 the original sentencing, enumerated in 18 U.S.C. § 3553(a), to the extent they remain applicable
25 at the time the motion is brought. 18 U.S.C. § 3582(c)(1)(A). Second, the Court must find
26 “extraordinary and compelling reasons” to release a defendant from BOP custody in a policy
27 statement. Id.

28 The Sentencing Commission policy statement explains that “extraordinary and compelling

1 reasons” exist where, among other things, “[t]he defendant is suffering from a serious physical or
2 mental condition or suffering from a serious functional or cognitive impairment... that
3 substantially diminishes the ability of the defendant to provide self-care within the environment
4 of a correctional facility and from which he or she is not expected to recover. U.S.S.G. § 1B1.13.
5 The Ninth Circuit declared this policy statement is not binding on district courts but noted that it
6 may inform a district court’s discretion when considering § 3582(c)(1)(A) motions. See United
7 States v. Aruda, 993 F.3d 797 (9th Cir. 2021).

8 **B. Mario Weick’s Compassionate Release**

9 Weick’s contends that he has satisfied the administrative exhaustion requirement because he
10 submitted a request to the warden six weeks prior to filing his first motion for compassionate
11 release, which was on May 13, 2021, and has not received a response. (#248, at 3). Regarding his
12 second motion for compassionate release, Weicks asserts that he submitted a request to the
13 warden on October 21, 2021 and again on November 19, 2021. (#264, at 3). Weicks has not
14 received a response from the warden. Id. Therefore, the Court finds Weicks has satisfied the
15 administrative exhaustion requirement.

16 Next, the Court must consider § 3553(a) factors which include the nature and circumstances
17 of the offense, the need for the sentence imposed, the kinds of sentences available and sentencing
18 ranges established in the guidelines, pertinent policy statements, the need to avoid unwarranted
19 sentence disparities, and the need to provide restitution. 18 U.S.C. § 3553(a). Weicks committed
20 a serious crime to top off his substantial criminal history. Weicks exploited a minor by taking her
21 across state lines to engage in prostitution, while also sexually abusing the child himself. The
22 severe nature of this crime does not weigh in favor of compassionate release. The Court found
23 that the sentence was justified when it was imposed and Weicks has not presented any evidence
24 convincing the Court that these factors favor an early release. Further, Weicks was already
25 resentenced according to a change in law, and without any other changes in the sentencing
26 regime, he is not entitled to a reduced sentence in this instance. The Court finds that the §
27 3553(a) factors do not support granting this motion.

1 Finally, the Court must consider whether extraordinary and compelling reasons exist that
2 justify compassionate release. In his first motion, Weicks argues that the COVID-19 pandemic
3 presents a dire circumstance that prevents him from adequately caring for his own health while
4 in prison. (#248, at 6). He claims that FCI Sheridan, where he is imprisoned, does not have the
5 resources available to meet the health needs of all the inmates, and that the conditions under
6 COVID-19 are so harsh that he must be released.

7 The Government responded, arguing that Weicks cannot show extraordinary and compelling
8 reasons because he initially refused the vaccine and because the BOP has been taking aggressive
9 steps to mitigate the risk of COVID-19 within the prisons. (#251, at 4). After the Government's
10 response, Weicks' filed a supplement to his original motion stating that he received the vaccine,
11 so the Government's argument should be considered moot. (#262). However, he argued that
12 since his vaccination, the new COVID-19 variants posed an additional risk that should be
13 considered. Id.

14 In Weick's second motion for compassionate release, he argues that he is 90% finished with
15 his sentence, that he will have strong family support, that prison conditions under COVID-19
16 have been too harsh, and that justice has been served because he has accepted responsibility for
17 his actions and has been rehabilitated. (#264).

18 The Government again responded arguing that although the vaccine may not be 100%
19 effective at preventing infection, it remains a safe and successful way to lessen the risk of
20 contracting the virus and of experiencing severe complications that can occur without the
21 vaccine. (#265). The Government also asserted that the BOP's efforts aimed at reducing
22 COVID-19 risks were effective, because at the time of filing, FCI Sheridan had no prisoners who
23 were currently testing positive for the virus. Id.

24 The Court recognizes how serious COVID-19 can be and has been. The virus' effect has left
25 a mark on each corner of society. However, the Court does not find that it constitutes an
26 extraordinary and compelling reason warranting early release in this instance. Weicks has not
27 presented any specific evidence that COVID-19 poses a particular threat to him. He has not made
28 any claims, or provided any medical records, that would indicate he faces an increased risk of

1 severe illness if he were to contract the virus. Weicks has also been vaccinated and therefore has
2 taken all the necessary steps available to best protect himself against serious illness. Many courts
3 have found that even prisoners who have chronic medical conditions but who have been
4 vaccinated do not meet the extraordinary and compelling reasons standard that justify
5 compassionate release. See United States v. Karibghossian, No. 2:13-cr-00318-CAS-1, 2021
6 WL 1200181, at *2 (C.D. Cal. Mar. 29, 2021) (finding that even suffering from type 2 diabetes,
7 obesity, hypertension, retinopathy, hepatitis C, OCD, and anxiety were not enough to justify
8 compassionate release because the defendant was vaccinated.); see United States v. Grummer,
9 519 F.Supp.3d 760, 763 (S.D. Cal. 2021) (“[a]lthough Defendant suffers from several chronic
10 conditions, his vaccination significantly mitigates the risk that he will contract COVID-19.”).
11 Even in light of the new variants such as Omicron, the Center for Disease Control (“CDC”)
12 states that the data indicates that “Omicron causes less severe illness and death in general[.]”
13 *Variants of the Virus*, CDC, [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/variants/index.html?s_cid=11775:%2Bcovid%20%2Bomicron:sem.b:p:RG:GM:gen:PTN:F)
14 [ncov/variants/index.html?s_cid=11775:%2Bcovid%20%2Bomicron:sem.b:p:RG:GM:gen:PTN:F](https://www.cdc.gov/coronavirus/2019-ncov/variants/index.html?s_cid=11775:%2Bcovid%20%2Bomicron:sem.b:p:RG:GM:gen:PTN:F)
15 Y22, (Aug. 11, 2021). Presently, Yamhill County, Oregon community level is stated as “low” by
16 the CDC. *COVID-19 County Check*, CDC, [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-nCoV/index.html)
17 [nCoV/index.html](https://www.cdc.gov/coronavirus/2019-nCoV/index.html) (Oct. 27, 2022).

18 Finally, Weicks can seek legal redress for his allegations that the BOP is failing to provide
19 adequate conditions for prisoners by properly grieving these conditions with his institution and
20 filing an appropriate legal action.

Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motions for Compassionate
leave (#248, #264) are **DENIED**;

IT IS FURTHER ORDERED that Defendant's Motion for Expedited Ruling (#268) is **DENIED as moot**.

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